**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, DC 20554**

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| In the Matter of | ) | |
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| 2016 Biennial Review of Telecommunications Regulations | ) | IB Docket No. 16-131 |
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To: The International Bureau

**COMMENTS OF ECHOSTAR SATELLITE OPERATING CORPORATION AND HUGHES NETWORK SYSTEMS, LLC**

## I. Introduction

EchoStar Satellite Operation Corporation and Hughes Network Systems, LLC (collectively with their affiliates, "EchoStar") submit these comments to assist in the Commission's 2016 biennial review of telecommunications regulations, specifically with respect to the Part 25 rules administered by the International Bureau for the regulation of satellite communications.[1]

Under Section 11 of the Communications Act of 1934, as amended,[2] the Commission is required to conduct a biennial review of its telecommunications regulations to: (i) determine whether such regulations are "no longer necessary in the public interest as the result of meaningful economic competition between providers of such service," and (ii) repeal or modify

[1] *See Commission Seeks Public Comment in 2016 Biennial Review of Telecommunications Regulations,* Public Notice, FCC 16-149 (Nov. 3, 2016).

[2] 47 U.S.C. § 161.

any regulation found to be no longer necessary.[3] Accordingly, pursuant to its Section 11 mandate, the Commission should take this opportunity to repeal or modify certain Part 25 rules that are no longer in the public interest, particularly those rules that impose unequal burdens on satellite service providers, placing them at a regulatory and competitive disadvantage with respect to other satellite or terrestrial service providers. As a result, such rules operate to impede, rather than foster, the growing economic competition that has developed over the years among both satellite and terrestrial service providers.

## II. The Commission Should Apply Established Guiding Principles in Determining Whether to Repeal or Modify Any Part 25 Rules

In determining whether certain Part 25 rules satisfy the Section 11 standard for repeal or modification, the Commission should apply the following established set of principles to guide its assessment:

(i) *Technological Neutrality*. As the FCC has recognized in many contexts, technological neutrality is an important governing principle of the agency's decisions.[4] Accordingly, the FCC has traditionally determined to maintain a level playing field without favoring any one technology. Nowhere is this as important in the licensing and operating rules that govern a communications service. Thus, the Commission should scrutinize Part 25 rules that put satellite operators in a worse position than their terrestrial wireline or wireless counterparts.

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[3] *See Cellco P'ship v. FCC,* 357 F.3d 88, 90 (D.C. Cir. 2004) (interpreting the Section 11 standard for repealing or modifying regulations determined to be no longer necessary).

[4] *See, e.g.*, *Expanding Access to Broadband and Encouraging Innovation through Establishment of an Air-Ground Mobile Broadband Secondary Service for Passengers Aboard Aircraft in the 14.0-14.5 GHz Band*, Notice of Proposed Rulemaking, 28 FCC Rcd 6765, 6796 ¶ 101 (2013) ("[W]e strive to establish technology neutral rules that allow for competing technologies and changes in technology over time without the need to change our rules.").

(ii) *Operational Flexibility*. As the FCC has found, it is critical for service providers to innovate, respond quickly to customer demands, and operate in a flexible manner.[5] Accordingly, the Commission's biennial review determination to repeal or modify any Part 25 rule should take into account the extent to which the rule limits the flexibility required for satellite operators to respond to market and consumer demands without unnecessary regulatory barriers.[6]

(iii) *Regulatory Certainty*. To spur innovation and investment, it is critical that the FCC's licensing and service rules are clear and certain. This is especially important for satellite deployments, which typically have a long lead time.[7] Failure to ultimately provide this certainty will result in hesitation by the industry to move forward with new services and technologies at a time when private investment is needed.[8]

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[5] *Amendment of the Commission's Rules Concerning Maritime Communications*, Fourth Report and Order and Third Further Notice of Proposed Rulemaking, 15 FCC Rcd 22585, 22598 ¶ 23 (2000) ("Affording AMTS licensees operational flexibility will enhance their ability to meet customer requirements and demand, and promote regulatory parity among maritime CMRS providers and between maritime CMRS providers and other CMRS providers."); *Amendment of the Commission's Rules To Permit Flexible Service Offerings in the Commercial Mobile Radio Services*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8965, 8976 ¶ 22 (1996) ("Allowing service providers to offer all types of fixed, mobile, and hybrid services in response to market demand will allow for more flexible responses to consumer demand, a greater diversity of services and combinations of services, and increased competition.").

[6] *See Service Rules for Advanced Wireless Services in 2000-2020 and 2180-2200 MHz Bands*, Report and Order and Order of Proposed Modification, 27 FCC Rcd 16102, 16187 ¶ 224 (2012) ("[W]e expect that flexibility will allow any licensee of AWS-4 authority to respond to consumer demand.").

[7] For instance, the ITU rules are set up to take that long lead time into account by giving seven years from the date of the API submission to bring a satellite network into use. The National Space Policy of the United States of America ("National Space Policy") also recognizes that the space industry needs to look far into the future by requiring NASA to set far reaching goals for space exploration into 2025 and beyond. *See* National Space Policy at 11 (June 28, 2010).

[8] The National Space Policy also requires that the government minimize, as much as possible, the regulatory burden for commercial space activities to ensure a regulatory environment for licensing space activities is timely and responsive, and encouraging investment in the satellite industry and the space industry in general remains critical. *See generally* National Space Policy. Also, as the U.S. takes into account its budgetary concerns, the private sector is left to fill the gap and ensure that the U.S. maintains its role a leading innovator. *See* NASA Office of Inspector General, *2014 Report on NASA's Top*

Applying these principles will allow the Commission fairly to determine whether any Part 25 rule is no longer required in the public interest and therefore must be repealed or modified. As a result, satellite operators and consumers will have greater assurance that the remaining regulations will permit greater investments in new satellite technologies and increased competition that will directly benefit U.S. consumers.

## III. The Commission Should Repeal or Modify a Few Satellite Licensing and Service Rules That Are No Longer Required in the Public Interest

At a minimum, the Commission's biennial review assessment should include the following Part 25 rules, all of which are inconsistent with one or more of the guiding principles discussed above, are no longer required in the public interest, and thus must be repealed or modified pursuant to the Commission's Section 11 mandate:

*(1) Repeal Annual Reporting Requirements.* 47 C.F.R. § 25.170's annual reporting requirements (*i.e.,* requiring satellite operators to file annual reports disclosing satellites and spectrum unavailable for service, contact information for interference resolution, and construction progress) are not technologically neutral – terrestrial wireless licensees generally are not required to submit similar annual reports. Additionally, the requirement to report on satellites and spectrum unavailable for service is unnecessary, given that satellite communications providers are already subject to Part 4 network outage reporting requirements. Thus, Section 25.170 is no longer required in the public interest and must be repealed.

*(2) Modify Space Station Application Licensing Rule to Authorize Official Copy of FCC Authorization.* 47 C.F.R. § 25.114 specifies application requirements for a space station

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*Management and Performance Challenges*, at 1-3 (Nov. 14, 2014), http://oig.nasa.gov/NASA2014ManagementChallenges.pdf (discussing challenges in funding projects). Significantly, the U.S. space industry has demonstrated a willingness to do so and invest resources to further advance the industry. *See, e.g.*, SpaceX, http://www.spacex.-com/about (last visited Dec. 5, 2016). Accordingly, the FCC needs to foster an environment where this private investment continues to happen.

authorization, but does not provide for issuance of an official copy of the space station authorization following grant of the application. Other radiocommunications stations (*e.g.,* earth stations and terrestrial wireless stations) are typically licensed pursuant to terms and conditions clearly specified in an FCC license document. Space stations, however, are authorized pursuant to stamp-grants and license orders, and their authorized terms and conditions often cannot be found in a single FCC license document. This deprives satellite operators of the regulatory certainty afforded to other licensees, and is not technologically neutral. Accordingly, Section 25.113 should be revised to add a new subsection providing for issuance of an official copy of an FCC authorization specifying terms and conditions for the operation of a U.S.-licensed space station or non-U.S.-licensed space station authorized for U.S. market access.

*(3) Modify Application Licensing Rules to Permit Streamlined Application Filing and Comprehensive FCC Authorization for Space and Earth Station Operations.* 47 C.F.R. §§ 25.114 and 25.115 specify separate application requirements for space and earth station authorizations, and do not offer any option to submit a streamlined application for a comprehensive FCC license authorizing both space and earth stations operating in the same network. This separate space/earth station licensing framework differs from the more unified licensing framework in which cellular and other terrestrial wireless operators are able to submit streamlined applications for a comprehensive network license authorizing a variety of base stations and user terminals within a geographic area. By requiring separate space and earth station applications and authorizations, Sections 25.114 and 25.115 thus impose undue restrictions on a satellite service provider's operational flexibility to configure and deploy its network of satellites, gateway earth stations, and user terminals. Accordingly, to ensure technological neutrality and enhance operational flexibility, Sections 25.114 and 25.115 each

should be revised to add a new subsection allowing applications for space or earth station authorizations to request authority for any or all space and earth stations operating in the same network, and further specifying streamlined application requirements for a comprehensive network license.

*(4) Modify Application Dismissal Rule to Streamline and Expedite Application Process.* 47 C.F.R. § 25.112's dismissal rule (*i.e.,* authorizing dismissal of applications found to be defective or substantially incomplete) relies upon a fairly vague standard requiring the filing of a "substantially complete" application. The apparently inconsistent application of this standard over the years has often resulted in dismissal of an application for minor errors or omissions that could have been corrected readily without unduly delaying FCC processing of the application. The vagueness of this "substantially complete" standard provides satellite and earth station applicants with little or no regulatory certainty as to whether they can expect timely processing of their applications, while limiting their operational flexibility to deploy service quickly in response to consumer demand. Moreover, such standard is not applied to require dismissal of terrestrial wireless applications filed in the FCC's Universal Licensing System, and thus the standard has not been applied in a technologically neutral manner.

Accordingly, Section 25.112 should be revised to add a new subsection (e) providing for automatic acceptance of an application for filing if the FCC fails to issue a written request for additional information within 30 days of the application filing, and further allowing an applicant to correct any application errors or omissions within 60 days of an FCC written request. Additionally, Section 25.112(a)(1)-(2) should be revised to add the following language at the end of subsections (a)(1) and (a)(2): ", and the applicant fails to cure any identified defects within 60 days of an FCC written request for additional information."

*(5) Repeal Licensing Requirement for Receive-only Earth Stations Receiving from Non-U.S.-licensed Satellites.* 47 C.F.R. § 25.131(j)'s licensing requirement for receive-only earth stations communicating with non-U.S.-licensed satellites not on the Permitted Space Station List imposes an unfair and discriminatory burden not imposed on receive-only earth stations communicating with U.S.-licensed satellites. Although the Commission has maintained that this restriction is consistent with U.S. treaty obligations,[9] the statutory basis for this assertion of jurisdiction remains unclear.[10] The Commission has further rationalized the licensing requirement by stating that the requirement offers a "necessary vehicle for Commission review of transmissions from non-U.S. licensed space stations entering the United States similar to the review we perform for transmissions from U.S.-licensed space stations."[11] This rationale, however, merely confirms that the Commission is seeking to regulate non-U.S.-licensed space stations wholly outside of its jurisdiction and in an apparent circumvention of U.S. international obligations. It also remains unclear how the Commission's ability to review transmissions from non-U.S.-licensed space stations outside of its jurisdiction is necessary in the public interest. Accordingly, Section 25.131(j) should be repealed as no longer in the public interest.

*(6) Modify License Assignment Rule to Permit Flexibility to Transfer Control of Licensing Authority of a Satellite to a Non-U.S. Administration.* 47 C.F.R. § 25.119 permits an assignment or transfer of control of a U.S. space station authorization to another party, but does not reflect Commission policy and precedent allowing a transfer of the licensing authority over a

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[9] *See Comprehensive Review of Licensing and Operating Rules for Satellite Services,* Second Report and Order, 30 FCC Rcd 14713, 14812-13 ¶ 315 (2015) ("*2015 Satellite Licensing Reform*").

[10] *See Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States,* Report and Order, 12 FCC Rcd 24094, 24179-80 ¶ 201 (1997); *Amendment of the Commission's Space Station Licensing Rules and Policies,* Second Report and Order, 18 FCC Rcd 12507, 12516-17 ¶¶ 20-22 (2003).

[11] *See 2015 Satellite Licensing Reform*, 30 FCC Rcd at 14813 ¶ 315.

satellite to a non-U.S. administration in cases where the transfer would serve the public interest.[12] Specifically, in certain cases, the Commission has approved a transfer of satellite licensing authority to a non-U.S.-administration, subject to an exchange of letters between administrations, authorizing relocation of a satellite to a non-U.S. orbital location to permit more productive use for new service to non-U.S. markets.[13] This informal, case-by-case FCC practice should be codified in Section 25.119's license assignment rule to provide satellite operators with greater regulatory certainty and flexibility to transfer their satellite authorizations to a non-U.S. licensing administration to achieve substantial public interest objectives, such as allowing additional fleet management flexibility and deployment of new, competitive services to non-U.S. markets.[14]

## IV. Conclusion

Based upon the foregoing, EchoStar urges the Commission to conduct a thorough biennial review to repeal or modify telecommunication regulations that are no longer in the public interest. Applying the established principles of technological neutrality, operational

[12] *See, e.g.,* Annex A to Grant of DISH Operating L.L.C., SAT-T/C-20090217-00027 (exchange of letters between FCC and Mexican licensing administration) (granted Sept. 17, 2010).

[13] *See id.*

[14] *See SES Americom, Inc.*, 21 FCC Rcd 3430, 3433 ¶ 8 (IB 2006) (FCC "generally has allowed satellite operators to rearrange satellites in their fleet to reflect business and customer considerations where no public interest factors are adversely affected"); *Intelsat LLC,* 19 FCC Rcd 2775, 2777 ¶ 9 (IB 2004) (public interest is served by "expanding the presence of U.S. satellite operators in Latin America).

flexibility, and regulatory certainty, the Commission should find that certain Part 25 satellite licensing and reporting requirements are inconsistent with these principles, are no longer in the public interest, and thus should be repealed or modified.

Respectfully submitted,

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